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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,579	04/02/2001	Alan R. Shealy	051207-1100	6598

7590 02/10/2004

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EXAMINER	
BORISSOV, IGOR N	

ART UNIT	PAPER NUMBER
3629	

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/828,579	Applicant(s) SHEALY, ALAN R.	
	Examiner Igor Borissov	Art Unit 3629	MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *03* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 November 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

The claim rejection under 35 USC § 112 in respect to **claims 1-5** has been withdrawn due to the Applicant's arguments.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per **claims 11-15**, they are confusing, because the term "logic" is not descriptive.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 6-10 are rejected under 35 U.S.C. 101 because the claimed method for providing for future rate changes does not recite a limitaion in the technological arts. The independently claimed steps of: identifying that a future rate plan is to be changed; selecting the future rate plan desired; and implementing the future rate change, are abstract ideas, which can be performed mentally without interaction of a physical structure. Because the independently claimed invention is directed to an abstract idea which does not recite a limitaion in the technological arts, those claims and claims

depending from them, are not permitted under 35 USC 101 as being related to non-statutory subject matter. However, in order to consider those claims in light of the prior art, examiner will assume that those claims recite statutorily permitted subject matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 6, 9, 11, 14, 16 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Ehlers et al. (US 5,924,486).

Ehlers et al. teach a method and system for environmental condition control and energy management, comprising:

As per **claims 1, 6, 11 and 16**,

identifying that a future rate plan is to be changed (column 11, lines 47-50; acolumn 9, lines 35-49);

selecting the future rate plan desired (column 11, lines 47-50; acolumn 9, lines 35-49);

implementing the future rate change and selecting the effective date of the future rate plan (column 27, line 66 – column 28, line 4).

As per **claims 9, 14 and 19,**

selecting the effective date of the future rate plan (column 27, line 66 – column 28, line 4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2-5, 7-8, 10, 12-13, 15, 17-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehlers et al.

As per **claims 2, 7, 12 and 17**, Ehlers et al. teach said method and system, comprising selecting a desired date and duration of new plan (column 27, line 66 – column 28, line 4).

Ehlers et al. do not specifically teach for determining if the future rate change is a single plan change.

Official notice is taken that it is well known that utility service providers have various plans for different groups of customers.

Therefor, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Ehlers et al. to include that said future rate change is a single plan change, because it would allow utility providers to attract customers to more profitable plan.

As per **claims 3, 8, 13 and 18**, Ehlers et al. teach said method and system, wherein the consistency of usage rate of the appliances is considered for estimation of future time period rate (column 20, lines 36-50).

Ehlers et al. do not specifically teach for verifying that the future rate plan is consistent with an old rate plan if the future rate change is the single plan change.

Official notice is taken that it is well known that utility service providers estimate service rates based on utility usage history data.

Therefor, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Ehlers et al. to include verifying that the future rate plan is consistent with an old rate plan, because it would allow the utility service providers to minimize unexpected losses.

As per **claim 4,** Ehlers et al. teach said method and system, comprising selecting the effective date of the future rate plan (column 27, line 66 – column 28, line 4).

As per **claims 5, 10, 15 and 20**, Ehlers et al. teach said method and system, comprising selecting the first day of a next billing cycle (column 11, lines 22 – column 12, line 4; column 27, line 66 – column 28, line 4).

Ehlers et al. do not specifically teach for selecting said day if the future rate change is not a single plan change.

Official notice is taken that it is well known that a customer can select a first day of a billing cycle or can be charged on the pro-rated basis.

Therefor, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Ehlers et al. to include selecting the first day of a

next billing cycle, because it would be convinient for the customers and utility service providers to calculate charges from the beginning of the billing cycle.

Response to Arguments

Applicant's arguments filed 11/17/03 have been fully considered but they are not persuasive.

The claim rejection under 35 USC § 112 in respect to claims 11-15.

In response to Applicant's argument that the term "logic" is explained in the specification as software running on computer devices, it is noted that the "software" feature is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The term "logic" can be broadly understood as "a particular mode of reasoning viewed as valid or faulty" ("Merriam-Webster's Collegiate Dictionary", 10 th Ed., 1993), and can be performed without use of a machine.

The claim rejection under 35 USC § 101 in respect to claims 6-10.

In response to Applicant's argument that **claims 6-10** are explained in the specification as method steps performed by means of a processor, examiner points out that the "processor" feature is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read

into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Therefor, because the independently claimed method is directed to an abstract idea which does not recite a limitaion in the technological arts, those claims and claims depending from them, are not permitted under 35 USC 101 as being related to non-statutory subject matter.

The claim rejection under 35 USC § 102 in respect to claims 1, 6, 9, 11, 14, 16 and 19.

In response to Applicant's argument that Ehlers et al. fail to disclose future rate changes, examiner stipulates that Ehlers et al. does, in fact, disclose this feature (See: Ehlers et al., column 11, lines 47-50; column 9, lines 35-49; column 27, line 66 – column 28, line 4).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Igor Borissov at telephone number (703) 305-4649.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Weiss, can be reached at (703) 308- 2702.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington D.C. 20231

or faxed to:

(703) 872-9306 [Official communications; including After Final communications labeled "Box AF"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.

IB

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